



PATENT

I hereby certify that on the date specified below, this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

August 8, 2006
Date

Jennifer Badley
Jennifer Badley

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Gregory Brown and Marcellino Tanumihardja
Application No. : 09/894,278
Filed : June 27, 2001
Title : MANAGED MESSAGING PLATFORM
Confirmation No. : 5239

Examiner : Liang-che Alex Wang
Art Unit : 2155
Docket No. : 0805-003-003-SEED

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF
PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON
FAILURE TO RECEIVE OFFICE ACTION UNDER 37 CFR 1.181(a)

Sir:

I. Applicant Entity (hereinafter "Applicant") is in receipt of Senior Petitions Attorney Douglas I. Wood's (hereinafter "Senior Petitions Attorney Wood") decision to dismiss (hereinafter "the Decision to Dismiss" – copy attached) Applicant's 6 April 2006 Petition

To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action¹ (hereinafter "Petition"). Applicant respectfully requests that Senior Petitions Attorney Wood reconsider the Decision to Dismiss in light of the additional facts noted herein.

II. In the Decision to Dismiss, Senior Petitions Attorney Wood states as follows:

It is noted that the Office action mailed on 26 May, 2005, was mailed to Seed Intellectual Property Group, PLLC, 701 Fifth Avenue, Suite 6300, Seattle, WA 98104-7092. However, in view of the petitioner's statement that the file was "transferred" to Berkeley on 31 May, 2005, it is not clear if the correspondence address had changed, or if petitioners were still receiving mail at the address of record on or after 31 May, 2005. Rather, the showing of record suggests, based on petitioners' statement that the "physical file" was "acquired," that the docketing and mail receipt was no longer occurring at the correspondence address. As such, it is unclear whether the docket records filed with the present petition reflect mail received from the correspondence address of record or some other address.

It appears, therefore, that the Office action may have been properly mailed to petitioners' address of record but not received due to petitioners' changing counsel, or was lost after receipt due to counsel's relocation. Any renewed petition to withdraw the holding of abandonment must include a showing that petitioners were, in fact, receiving mail at the correspondence address of record at the time the Office action mailed on 26 May, 2005, was mailed, and for a reasonable time thereafter.

See Decision to Dismiss, p. 3 (12 June 2006).

III. In response to Senior Petitions Attorney Wood's direction regarding reconsideration of his Decision to Dismiss, Applicant respectfully points out that

A. As an initial point, Applicant points out that, in general, the PTO calculates most time periods from the stamped mailing date of an Office Action, in a sense treating the stamped mailing date as a constructive date of delivery to an Applicant. When Applicant prepared the currently-rejected Petition, it followed the same logic, reasoning that the stated mailing date of 27 May 2005 was to be treated as the constructive date of delivery. Consequently, Applicant reasoned that since 27 May 2005 was the constructive date of delivery and since the physical file transferred by Seed to Berkeley Law and Technology Group (hereinafter "BLTG") on 31 May 2005 did not contain the stated 27

¹ Said 10 April 2006 Petition To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action is hereby incorporated by reference in its entirety; the text and materials are not expressly reproduced here for sake of clarity, although Applicant will be glad to reproduce such text and materials should Senior Petitions Attorney Wood require such.

May 2005 Office Action, such was prima facie evidence that the Office Action was never received. Applicant thanks Senior Petitions Attorney Wood for the opportunity to rectify this misunderstanding.

B. On 26 May 2005² Seed Intellectual Property Law Group, PLLC (hereinafter “Seed”) was receiving mail for the application file having Seed Docket Number 360044.403³ (hereinafter “Seed ‘403”) at the correspondence address of record. That is, from 26 May 2005 and up to 31 May 2005 Seed was in possession of Seed ‘403 and was thus receiving mail associated with Seed ‘403 at the correspondence at the correspondence address of record of Seed, 701 Fifth Avenue, Suite 6300, Seattle, WA 98104-7092.

C. From 31 May 2005 – the date on which the Seed ‘403 was transferred to BLTG -- until 12 January 2006 when the USPTO issued a Notice of Acceptance of Power of Attorney (copy attached), the correspondence address continued to be Seed, 701 Fifth Avenue, Suite 6300, Seattle, WA 98104-7092. During this time, Seed Intellectual Property Group should have forwarded any correspondence received from the PTO for the Seed ‘403 file to BLTG. Seed Intellectual Property Group would have ordinarily done this as a courtesy for most clients, but in this instance it surely should have done so in that Seed was then handling and continues to handle several legal matters for BLTG as a client and/or for other clients for whom BLTG exercises supervisory authority.

D. In response to Senior Petitions Attorney Wood’s direction as set forth above, on August 2, 2006 our office contacted Seed Intellectual Property Group and asked for a written statement from Seed concerning the receipt and/or forwarding of correspondence for the Seed ‘403 file during the time period referenced in the Decision to Dismiss (e.g., “the time the Office action mailed on 26 May, 2005, was mailed, and for a reasonable time thereafter”). In response to our query, Seed Intellectual Property Group researched the matter further and informed us that, according to their internal log of incoming correspondence, Seed received a non-final Office Action for the Seed ‘403 file on 01 June 2005. Seed also informed us that their internal log indicated that the non-final Office Action for the Seed ‘403 file was forwarded to Intellectual Ventures, LLC on 02 June

² Applicant respectfully points out that the Notice of Abandonment states a date of 27 May 2005 for the Office Action, but that Senior Petitions Attorney Wood states a date of 26 May 2005.

³ The file was eventually reassigned the docket number appearing in the caption of the instant Petition.

2005. At our request, Seed then had a Seed employee attest to the foregoing, *See Declaration of Andrea Nitsche* (attached), *Exhibit A*.

D. In the interests of disclosure, the undersigned desires to alert Senior Petitions Attorney Wood that he is currently an employee of Intellectual Ventures. The undersigned has spoken with various Intellectual Ventures personnel and attests that to the best of his knowledge Intellectual Ventures employees have been unable to locate any record of receipt of the non-final Office Action allegedly forwarded to Intellectual Ventures by Seed on 02 June 2005.

E. In light of the foregoing, Applicant respectfully submits that all requirements noted by Senior Petitions Attorney Wood, *See Senior Petitions Attorney Wood's Decision to Dismiss*, p. 3 (12 June 2006) (copy attached), have been satisfied, and hence respectfully asks that, pursuant to MPEP §711.03(c)(I)(A), the Notice of Abandonment of 31 January 2006 be withdrawn in that Applicant has never received the Office Action stated as sent by the USPTO on 27 May 2005.

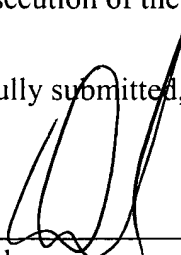
F. As a final note, in the course of preparing this response, the undersigned noted that the originally submitted declarations of Jennifer Badley and Sue Bollinger omitted the statements regarding the penalties for "willful false statements and the like" as required by the 37 CFR 1.68, *Declaration in Lieu of Oath*. Accordingly, Applicant is submitting herewith Supplemental Declarations of Jennifer Badley and Sue Bollinger having the required statement. Applicant respectfully points out that such declarations are substantial copies of those submitted with the original petition, and are merely being submitted in an effort to forestall any issues subsequently arising.

SUMMARY

As referenced above, the undersigned has no record of receiving the Office Action dated 27 May 2005. Accordingly, Applicant submits that it never received the Office Action from the Patent Office and that no fee for this petition is necessary. See MPEP §711.03(c)(I). Applicant further requests that the USPTO Withdraw the Holding of Abandonment Based on Failure to Receive the Office Action and further requests a new Office Action for the subject application since the original was not received by the Applicant or its legal representative.

Senior Petitions Attorney Wood is invited to contact the undersigned at (425) 467-2260 with any issues that may advance prosecution of the application on the merits.

Respectfully submitted,



Dale Cook
Attorney
Registration No. 42,434

DRC:jmb

Enclosures:

- Postcard
- Declaration of Andrea Nitsche "Exhibit A";
With attachment (Exhibit 1)
- Notice of Acceptance of Power of Attorney (Copy)
- Senior Petitions Attorney Wood's Decision to Dismiss (Copy)
- Declaration of Jennifer Badley – Supplemental (with attachments)
- Declaration of Sue Bollinger – Supplemental (with attachments)

1756 – 114th Ave. S.E., Suite 110
Bellevue, WA 98004
(425) 467-2300
(425) 467-2351 facsimile

http://isf_share/Shared Documents/Patents Filed-Active Drafts/Data Architecture-003/0805-003-003-SEED ManagedMessagingPlatform/2ndPetition re Abandonment.doc



DECLARATION OF ANDREA NITSCHÉ

I, Andrea Nitsche, hereby attest that on or about 02 August 2006, I reviewed our internal log of incoming correspondence to determine if any entries existed corresponding with an alleged USPTO mailing on a 27 May 2005 office action for an application with Seed Docket number 360044.403, entitled "Managed Messaging Platform", with named inventors Gregory Brown and Marcellino Tanumihardja. Upon review of the internal log I noted that a non-final office action was logged as received by Seed Intellectual Property Group at 701 Fifth Avenue, Suite 6300, Seattle, WA 98104-7092 for the above-noted application on 01 June 2005. The internal log indicated that this non-final office action was mailed to Intellectual Ventures, LLC, on 02 June 2005. See attached herein, as Exhibit 1, a true and correct copy of Seed Intellectual Property Group's log of incoming correspondence, which includes an entry showing the received and sent dates for the non-final office action for the application having Seed Docket Number 360044.403. I further attest that on the basis of the foregoing and on my personal knowledge that correspondence for the above-noted application was being received at the correspondence address of record. The above information is true and correct to the best of my knowledge, under the penalty of perjury under the laws of the United States.

DATED this 4th day of August, 2006.


Docketing Clerk



SEED/Docket No.	Date Correspondence Received	Correspondence From	Description	Date Sent
[REDACTED]	31-May-05	Tomkins	Renewal Reminder	2-Jun-05
[REDACTED]	31-May-05	F.R. Kelly	Information Request	2-Jun-05
[REDACTED]	31-May-05	Wilkinson & Grist	Renewal Reminder	2-Jun-05
[REDACTED]	1-Jun-05	Grunecker	Maintenance Fee Error	2-Jun-05
[REDACTED]	27-May-05	USPTO	Corrected Filing Receipt	2-Jun-05
[REDACTED]	31-May-05	Danubia	Renewal Reminder	2-Jun-05
[REDACTED]	19-May-05	Thomson & Thomson	Watch Notice	2-Jun-05
[REDACTED]	25-May-05	Thomson & Thomson	Watch Notice	2-Jun-05
[REDACTED]	1-Jun-05	USPTO	Non-final Office Action	2-Jun-05
[REDACTED]	31-May-05	USPTO	Notice of Allowance	2-Jun-05
[REDACTED]	1-Jun-05	USPTO	Notice of Recordation	2-Jun-05
[REDACTED]	31-May-05	USPTO	Notice of Recordation	2-Jun-05
[REDACTED]	8-Jun-05	FB Rice & Co.	Renewal Reminder	8-Jun-05
[REDACTED]	7-Jun-05	USPTO	Certificate of Registration	8-Jun-05
[REDACTED]	6-Jun-05	Grunecker	Maintenance Fee Reminder	8-Jun-05
[REDACTED]	17-Apr-00	Seed	Certificate of Registration	8-Jun-05
[REDACTED]	6-Jun-05	Thomson & Thomson	Watch Notice	8-Jun-05
[REDACTED]	13-Jun-05	USPTO	Maintenance Fee Reminder	16-Jun-05
[REDACTED]	14-Jun-05	Wilkinson & Grist	Renewal Reminder	16-Jun-05

EXHIBIT 1
Page 1 of 2

[REDACTED]

Santitas

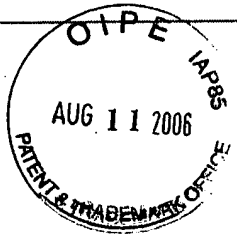
[REDACTED]

Intellectual Ventures, LLC

[REDACTED]



UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DW Jun-06

DALE COOK
SUITE 110
1756 114TH AVE. SE
BELLEVUE WA 98004

COPY MAILED

JUN 1 2 2006

OFFICE OF PETITIONS

In re Application of :
Tanumihardja et al. :
Application No. 09/894,278 : ON PETITION
Filed: 27 June, 2001 :
Attorney Docket No. 0805-003- :
003-SEED :

This is a decision in reference to the petition under 37 CFR 1.181 filed on 10 April, 2006, to withdraw the holding of abandonment..

The petition is DISMISSED.

This application became abandoned on 27 August, 2005, for failure to submit a timely response to the non-final Office action mailed on 26 May, 2005, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 31 January, 2006.

Petitioners assert that the Office action mailed on 26 May, 2005, was never received. Specifically, petitioners assert that applicants' file was acquired by practitioners Berkeley Law and Technology Group (hereinafter "Berkeley") from Seed Intellectual Group, the correspondence address of record, on or about 31 May, 2005. A review of the file was conducted on 2 June, 2005, and the Office action mailed on 26 May, 2005, was not located in the file. Petitioners aver that an additional search of the file jacket and docket record was conducted on 7 February, 2006, after the file was transferred from Berkeley to current attorney Dale

IV - ISF Docketing	
Entered in Docket	
by	SARA
On	6/14/06
Double Docketed	
by	

RECEIVED

JUN 1 4 2006

Intellectual Ventures

Cook's office, and the Office action mailed on 26 May, 2005, was not located therein.

Petitioners have also provided copies of docket reports as well as a statement by Susan Bollinger, Intake Manager for Berkeley, and Jennifer Badley, presumably also an employee of Berkeley, stating that the Office action was not received.

The showing of record is insufficient to withdraw the holding of abandonment.

A review of the written record indicates no irregularity in the mailing of the Notice, and in the absence of any irregularity there is a strong presumption that the Notice was properly mailed to the applicant at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹ This showing may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail.

It is noted that the Office action mailed on 26 May, 2005, was mailed to Seed Intellectual Property Group PLLC, 701 Fifth Avenue, Suite 6300, Seattle, WA 98104-7092. However, in view of petitioner's statement that the file was "transferred" to Berkeley on 31 May, 2005, it is not clear if the correspondence address had changed, or if petitioners were still receiving mail at the address of record on or after 31 May, 2005. Rather, the showing of record suggests, based on petitioners' statement that the "physical file" was "acquired," that the docketing and mail receipt was no longer occurring at the correspondence address. As such, it is unclear whether the docket records filed with the present petition reflect mail received from the correspondence address of record or some other address.

¹ See Withdrawing the Holding of Abandonment When Office Actions Are Not Received, Notice 1156 Off. Gaz. Pat. Office 53 (November 16, 1993).

It appears, therefore, that the Office action may have been properly mailed to petitioners' address of record but not received due to petitioners' changing counsel, or was lost after receipt due to counsel's relocation. Any renewed petition to withdraw the holding of abandonment must include a showing that petitioners were, in fact, receiving mail at the correspondence address of record at the time the Office action mailed on 26 May, 2005, was mailed, **and for a reasonable time thereafter.**

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision. **This period may not be extended.**²

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

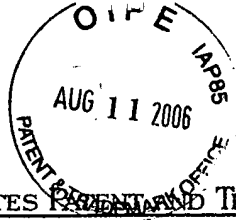
By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

² 37 CFR 1.181(f).



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/894,278	06/27/2001	Marcellino Tanumihardja	0805-003-003-SEED

CONFIRMATION NO. 5239



OC000000017837722


Dale Cook
 Suite 110
 1756 114th Ave. SE
 Bellevue, WA 98004

Date Mailed: 01/12/2006

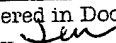
NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 01/06/2006.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.


 VICTORIA VAN
 PTOSS (703) 305-0677

ATTORNEY/APPLICANT COPY

IV - ISF Docketing	
Entered in Docket	
by 	
On 1/18/06	
Double Docketed	
by _____	
On _____	

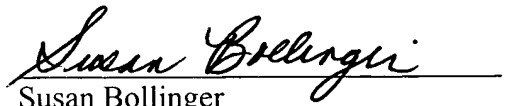
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 JAN 17 2006



DECLARATION OF SUSAN BOLLINGER- SUPPLEMENTAL

I, Susan Bollinger, Intake Manager for Berkeley Law and Technology Group, hereby attest that on or about 31 May 2005 the physical file for application number 09/894,278, having Seed docket number 360044.403, was received from Seed Intellectual Group. See herein attached as **Exhibit 1: Highlighted line 3 of internal inventory log "Sienna Group Inventory"**. I attest that on or about 02 June 2005 an inventory of the contents of the physical file for Seed docket number 360044.403 was conducted. See herein attached as **Exhibits 2A – 2B: (2A) A print screen of a Microsoft Word folder entitled "09-894278" of the scanned file contents. (Note that the "Office Action form" on the print screen does not refer to the Office Action mailed on 27 May 2005, but instead refers to the Restriction Requirement of 06 December 2004); (2B) Highlighted lines 7 and 8 of an internal table entitled "Sienna Group Intake Report"**. I further attest that on the basis of the foregoing and on my personal knowledge that the Office Action allegedly mailed on 27 May 2005 was not present in the file. The above information is true and correct to the best of my knowledge, under the penalty of perjury under the laws of the United States.

DATED this 7th day of August, 2006.


Susan Bollinger
Intake Manager
Berkeley Law and Technology Group

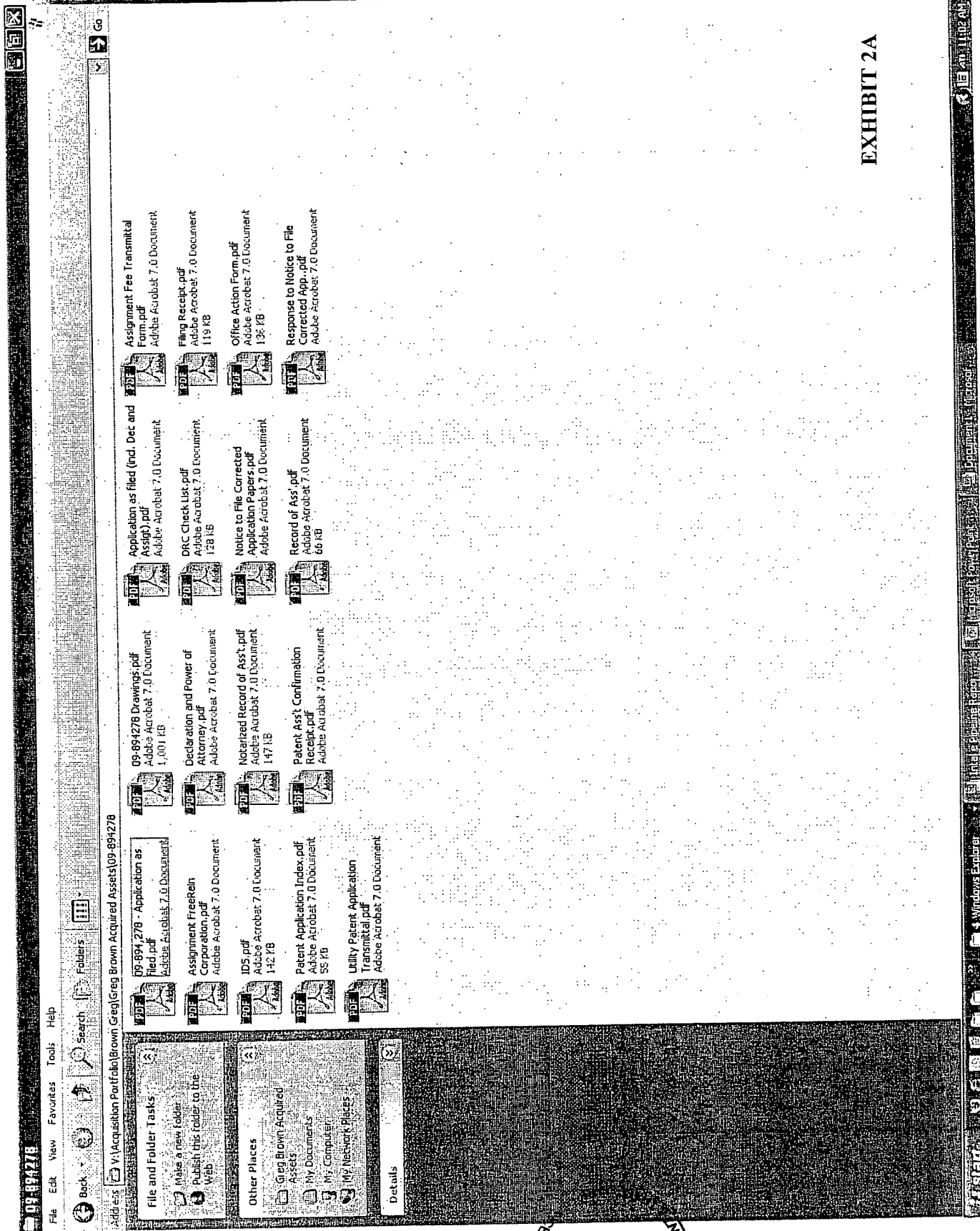
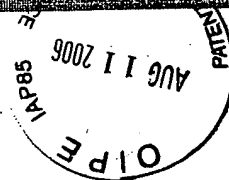
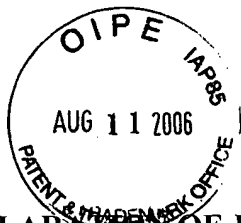


EXHIBIT 2A

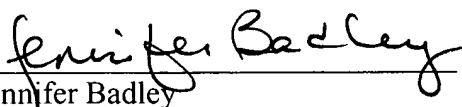




DECLARATION OF JENNIFER BADLEY- SUPPLEMENTAL

I, Jennifer Badley, hereby attest that on or about 07 October 2005, a new file, internal to our organization, was created and stamped with the docket number 0803-003-003-SEED, from the material of the file associated with Seed docket number 360044.403. I further attest that on 7 February 2006, I conducted a search of the file jacket and docketing record for application number 09/894,278, having internal docket number 0805-003-003-SEED and confirmed that the 27 May 2005 Office Action was not received. **See attached herein, as Exhibit 1A, a true and correct copy of the docket record of 27 August 2005, which would include an entry for the three-month due date for the response to the Office Action if it had in fact been received; and Exhibit 1B, a true and correct copy of the file index for docket number 0805-003-003-SEED, which would include entries for the receipt of the 27 May 2005 Office Action and its 27 August 2005 due date, if the Office Action had been received.** I further attest that on the basis of the foregoing and on my personal knowledge that the Office Action allegedly mailed on 27 May 2005 was not present in the file. The above information is true and correct to the best of my knowledge, under the penalty of perjury under the laws of the United States.

DATED this 8th day of August, 2006.


Jennifer Badley

August 27, 2005

Saturday



August 2005						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
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28	29	30	31			

September 2005						
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17	18	19	20	21	22	23
24	25	26	27	28	29	30

7^{am}

8⁰⁰ 0404-003-028-000000 Auto Purge of Serial Use Devices - 60 days to DDL to file foreigners (US filed on 10/26/04)

0404-003-009B-000000 Enhanced User Assistance - 60 days to DDL to file foreigners (US filed on 10/26/04)

9⁰⁰ 0404-003-009A-000000 Enhanced User Assistance - 60 days to DDL to file foreigners (US filed on 10/26/04)

10⁰⁰

11⁰⁰

12^{pm}

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6⁰⁰

Exhibit 1A



USPTO FILE INDEX:

Docket #: 0805-003-003-SEED
360044.403
Date Filed: June 27, 2001
TITLE: MANAGED MESSAGING PLATFORM
Inventors: Gregory Brown and Marcellino Tanumihardja
USAN: 09/894,278
Examiner: Liang Che A. Wang Telephone: (#)
Art Unit: 2155 Confirmation #: 5239
File History: Provisional App. 60/282,381 filed on April 5, 2001
Assignment Recorded on: June 27, 2001 at Reel 011946, Frame 0546 to Freerein Corporation
April 22, 2005 at Reel 015937, Frame 0330 to Gregory Brown

Tab	Documents	Mailed from USPTO	Date Due to USPTO	Date Sent to USPTO
1.	Utility Application (71 pages); 42 sheets of drawings (35 Figures); w/Dec., POA, and Assignment; Request NOT to publish			06/27/01
2.	Notice to File Corrected Application Papers (Drawings)	08/17/01	10/17/01	
3.	Filing Receipt (Correct)	08/17/01		
4.	Response to Notice to File Correct Application Papers; Substitute Drawings; and Request for Drawing Change			08/31/01
5.	IDS; PTO-1449; 3 cited references			09/19/01
6.	Notice of Recordation of Assignment; PTO-1595; and Assignment	09/12/01		
7.	Updated Filing Receipt	10/11/01		
8.	Restriction Requirement	12/06/04	01/06/05	
9.	Check; PTO/SB/21; PTO/SB/17; PTO/SB/22 and Response to Restriction Requirement			04/06/05
10.	Assignment Filed Electronically			04/22/05
11.	Notice of Recordation of Assignment	04/25/05		
12.	Postcard; Check; Form PTO-1595 Assignment Recordation Cover Sheet; Copy of Assignment			01/04/06
13.	Postcard; Post-Filing Transmittal; Statement Under 37 CFR 3.73(b); Power of Attorney to Prosecute Applications Before the USPTO; Assignment of Patent Rights			01/04/06
14.	Notice of Acceptance of Power of Attorney	01/12/06		
15.				
16.				
17.				

Last Updated on 01/18/06 by skl

http://isf_share/Shared Documents/Patents Filed-Active Drafts/Data Architecture-003/0805-003-003-SEED ManagedMessagingPlatform/file index.doc